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Supreme Court, U.S.
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No. 99-1098

IN THE

Supreme Court of the United States

MICHAEL BARTH,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND GAS; TOWNSHIP OF BERNARDS; BERNARDS TOWNSHIP SEWAGE AUTHORITY; BERNARDS TOWNSHIP BOARD OF HEALTH; BERNARDS TOWNSHIP MUNICIPAL COURT; J. KNOX FELTER, JR., Senior Sanitarian, Bernards Township; PETER MESSINA, P.E., P.P., Township Engineer/Planner; PEGGY WARREN, Certified Tax Collector, Bernards Township; BARBARA J. PENCE, Township Administrator; J. DOE(S), individually and in their official capacities; STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ITS COMMISSIONERS, and various New Jersey State Statutes; A.D. RUNYON OIL COMPANY; HARRY P. BELDON, Attorney at Law,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS [Listed Below]

FRANK N. YURASKO
Attorney for Respondents Township of Bernards, Bernards Township Sewage Authority, Bernards Township Board of Health, Bernards Township Municipal Court, J. Knox Felter, Jr., Peter A. Messina, Peggy Warren and Barbara J. Pence, as to Compensatory Non-Inverse Condemnation Damage Claims Only
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27pp

QUESTIONS PRESENTED

1. Whether the petitioner could establish the existence of any jury question as to his allegations that the respondent Bernards Township defendants (Township of Bernards, Bernards Township Sewage Authority, Bernards Township Board of Health, Bernards Township Municipal Court, J. Knox Felter, Jr., Peter Messina, Peggy Warren and Barbara J. Pence) violated his federal civil rights in any manner.

2. Whether the petitioner could avoid the bar of the procedural requirements of the New Jersey Tort Claims Act, and his failure to comply therewith, as to his damage claims under State law, against the Bernards Township defendants.

3. Whether the petitioner's Complaint sufficiently pleaded a cause of action for damages under the federal RICO statute.

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Petitioner's Appendix contains the opinions below that address the issues relating to the claims for damages against the Bernards Township defendants. Specifically, the opinion of the Court of Appeals for the Third Circuit, No. 99-5190, at page A2 of Petitioner's Appendix, and the opinion of the United States District Court for the District of New Jersey, Civil No. 97-2163, at page B1 of Petitioner's Appendix. These are unreported opinions.

STATEMENT OF JURISDICTION

Jurisdiction is pursuant to 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner brought claims for violation of his civil rights, pursuant to 42 U.S.C. § 1983, and for conspiracy to commit such violations under § 1985; the civil rights alleged violated appear to be petitioner's rights to substantive and procedural due process of law, under the United States Constitution, Fourth and Fourteenth Amendments. Petitioner also alleged a civil cause of action under 18 U.S.C. § 1961, *et seq.* (the "RICO" statute), and a private right of action under the Flood Insurance Act, 42 U.S.C. § 4001. The New Jersey Tort Claims Act ("TCA"), N.J.S.A. 59:1-1, *et seq.*, is dispositive of petitioner's claims under New Jersey law, in particular N.J.S.A. 59:8-3, 59:8-4, 59:8-8 and 59:8-9.

N.J.S.A. 59:8-3 provides:

> No action shall be brought against a public entity or public employee under this act unless the claim upon which it is based shall have been presented in accordance with the procedure set forth in this chapter.

N.J.S.A. 59:8-4 provides:

> A claim shall be presented by the claimant or by a person acting on his behalf and shall include:
>
> a. The name and post office address of the claimant;
>
> b. The post-office address to which the person presenting the claim desires notices to be sent;
>
> c. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
>
> d. A general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
>
> e. The name or names of the public entity, employee or employees causing the injury, damage or loss, if known; and
>
> f. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

N.J.S.A. 59:8-8a provides:

> A claim relating to a cause of action for death or for injury or damage to person or to property shall be presented as provided in this chapter not later

than the ninetieth day after accrual of the cause of action. After the expiration of six months from the date notice of claim is received, the claimant may file suit in an appropriate court of law. The claimant shall be forever barred from recovering against a public entity or public employee if:

> a. He failed to file his claim with the public entity within 90 days of accrual of the claim except as otherwise provided in section 59:8-9[.]

N.J.S.A. 59:8-9 provides:

> A claimant who fails to file notice of his claim within 90 days as provided in section 59:8-8 of this act, may, in the discretion of a judge of the Superior Court, be permitted to file such notice at any time within one year after the accrual of his claim provided that the public entity or the public employee has not been substantially prejudiced thereby. Application to the court for permission to file a late notice of claim shall be made upon motion supported by affidavits based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by section 59:8-8 of this act or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter; provided that in no event may any suit against a public entity or a public employee arising under this act be filed later than two years from the time of the accrual of the claim.

STATEMENT OF THE CASE

This brief presents the position of the respondent Bernards Township defendants, as to petitioner's claims for money damages. Claims against Bernards Township for inverse condemnation have been addressed by separate counsel, here and in the courts below.

Petitioner instituted this action against the Bernards Township defendants, *inter alia*, alleging that various actions had deprived him of his federal civil rights, violated the federal RICO statute, and entitled him to damages under New Jersey Law. The actions complained of included the alleged regrading of an adjacent roadway and the installation of storm sewers elsewhere on the same road, both of which allegedly caused flooding on petitioner's property, and the respondents' efforts to compel petitioner to comply with the Township's ordinance requiring mandatory sewer connections, including a prosecution thereunder brought against the petitioner in the Township's Municipal Court, which proceedings were alleged, without foundation, to have been irregular. The regrading merely resurfaced the roadway and repaired subsidence; the storm sewers were subdivision improvements installed by a private developer. The Municipal Court proceedings were ultimately determined in petitioner's favor, after his compliance with the ordinance.

The claims for alleged civil rights violations were dismissed, as to the § 1983 claims, due to the existence of New Jersey's eminent domain statute, with inverse condemnation remedies, as an adequate remedy at State law, and for lack of proof of any violation of a protected civil right. The District Court also found a lack of proof of the supposed irregularities in the Municipal Court proceedings,

in the face of a tape log and affidavits recounting the procedure by which Municipal Court tapes are reproduced, by the staff of the Superior Court of New Jersey for Somerset County. The § 1985 claims were dismissed for lack of any allegation of class-based animus.

The RICO claim was dismissed as insufficient on its face, there being no specification of the alleged predicate acts.

The claims under New Jersey law were dismissed for failure to comply with the TCA notice requirements; this deficiency was, at the time of the District Court's decision, entirely incurable.

REASONS FOR DENYING THE WRIT

Petitioner's application for a writ of certiorari should be denied on the civil rights, RICO and New Jersey claims for damages, against the respondent Bernards Township defendants, under Rule 10 of the Supreme Court Rules for the following reasons:

1. The Third Circuit affirmed the District Court's granting of summary judgment in favor of the Bernards Township defendants, applying accepted and usual standards under Fed. R. Civ. P. 56, where as a matter of law, the existence of an adequate remedy under State law bars claims under 42 U.S.C. § 1983 for deprivation of property rights, the lack of any allegation of class-based animus renders a claim under 42 U.S.C. § 1985 insufficient, and the failure to file a timely notice of claim under the TCA bars tort actions for damages against public entities and public employees under New Jersey law. Similarly, the dismissal of petitioner's claims, arising from alleged irregularities in the Municipal Court proceedings, were

proper based on unrefuted documentary evidence. There is, therefore, no need for the Supreme Court to exercise its power of supervision. Rule 10(a).

2. The decision of the Third Circuit was not in conflict with the decisions of other United States Courts of Appeal, and applied accepted law and methodology. There is, therefore, no need for the Supreme Court to exercise its power of supervision. Rule 10(a).

3. The Third Circuit's decision of the claims under the Civil Rights Act and the RICO statute were consistent with existing precedent and accepted methodology, and not in conflict with applicable decisions of the Supreme Court. There is, therefore, no need for the Supreme Court to settle an important issue of federal Law. Rule 10(c).

SUMMARY OF THE ARGUMENT

Petitioner's claims, for damages under State law, as against the Bernards Township defendants, are defeated by his failure to comply with the procedural requirements of the New Jersey Tort Claims Act, specifically the requirement of written notice within 90 days of the accrual of the claim. The petitioner's motion to the District Court, for leave to file a late notice of claim, was out of time, in the wrong court, and insufficient under the statute, and thus properly denied.

Petitioner's claims, that the Bernards Township defendants violated his civil rights, are defeated by the absence of any allegation of class-based discrimination or animus, the rational basis for the defendants' actions, and the existence of adequate remedies at State law for the alleged injuries done to petitioner.

Petitioner's Complaint failed to sufficiently plead a cause of action for damages under the RICO statute.

ARGUMENT

I.

WHETHER THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF THE CLAIMS FOR DAMAGES, UNDER NEW JERSEY STATE LAW, FOR FAILURE TO COMPLY WITH THE NOTICE PROVISIONS OF THE TORT CLAIMS ACT.

The *pro se* Complaint in this action alleges a number of claims for compensatory damages. To the extent those claims assert causes of action based on New Jersey, rather than federal, law, against the Township defendants, those claims are governed by the New Jersey Tort Claims Act ("TCA"), N.J.S.A. 59:1-1, *et seq.* The District Court held that petitioner's failure to comply with the TCA's requirement, that a written notice of claim be served upon public entities and their employees within 90 days after accrual, barred the State law claims; the District Court also denied petitioner's cross-motion for leave to file a late notice of claim.

A claimant is barred from asserting any claim for damages in tort against the Township defendants, under State law, until and unless he files a notice of claim, within 90 days after accrual, and thereafter allows the public entities and employees a period of six months to investigate and/or settle the same. N.J.S.A. 59:8-1, *et seq.* Petitioner's failure to comply is fatal, as to his State law claims for compensatory damages. N.J.S.A. 59:8-3; *e.g., Wood v. County of Burlington*, 302 N.J. Super. 371, 375-7 (App. Div. 1997). This is the short answer to petitioner's laundry list of State law claims that were assertedly dismissed with "no basis." Petition, at 18.

Petitioner has never contested his failure to comply with the TCA notice requirement. Rather, he asserts that the Township defendants are either estopped from asserting the defense, or have waived it. Petition, at 28. However, the cases cited in support of the estoppel argument, *Marley v. Palmyra*, 193 N.J. Super. 271 (Law Div. 1983), and *Anske v. Borough of Palisades Park*, 139 N.J. Super. 342 (1976), are both inapposite, in that the defendants in *Marley* failed to plead the defense at all, and the defense was pleaded belatedly, after extensive investigation of petitioner's oral report, in *Anske*. Petitioner also claims that the defense was waived by the Township defendants' failure to plead it, citing *Hill v. Board of Educ. of Middleton Tp.*, 183 N.J. Super. 36 (App. Div. 1982). This ignores the inclusion of the defense in the Township defendants' initial pleading herein.

Petitioner's argument, as to the cross-motion for leave to file a late notice of claim, ignores what the District Court could not: the plain language of N.J.S.A. 59:8-9 vests jurisdiction, to grant leave to file a late notice of claim, solely with judges of the Superior Court of New Jersey, and then only on motion filed within one year of the accrual of the claim. Failure to make the motion within a year of accrual deprives even the Superior Court of jurisdiction. *E.g., Iaconianni v. New Jersey Turnpike Auth.*, 236 N.J. Super. 294, 298 (App. Div. 1989), *cert. denied*, 121 N.J. 592 (1990), and cases there cited. Petitioner's cross-motion came more than a year after this action began, and thus was obviously untimely. Further, the statute allows such motions to be granted only upon a showing of "extraordinary circumstances" to explain the delay, a difficult standard which petitioner made no attempt to meet. *O'Neill v. City of Newark*, 304 N.J. Super. 543, 552 (App. Div. 1997) (plaintiff who lost use of leg not shown to be incapable of consulting

counsel), and cases there cited. Simply put, petitioner's cross-motion, to file a late notice of claim, was far too little, far too late, and addressed to the wrong court. The cross motion was, therefore, properly denied by the District Court.

Petitioner argues that the dismissal of the Complaint on TCA grounds should have been without prejudice, citing *Guerro v. City of Newark*, above. Petition, at 28. However, *Guerro*, here, addressed dismissal for failure to comply with the six-month waiting period between filing of a notice of claim and institution of a lawsuit. *Guerro* thus addresses different statutory language, and an entirely different question than that presented here. Neither *Guerro*, nor any other precedent, support the proposition that dismissal, for failure to comply with the basic notice of claim requirement under the TCA, is to be anything other than with prejudice.

For these reasons, it is respectfully submitted that the Court of Appeals properly affirmed the District Court's dismissal of the State law tort claims, and the denial of petitioner's motion to file a late notice of claim.

II.

WHETHER THE DISTRICT COURT PROPERLY RULED THAT PETITIONER HAD NOT ASSERTED A CLAIM FOR VIOLATION OF HIS CONSTITUTIONAL RIGHTS, UNDER 42 U.S.C. §§ 1983 AND 1985, THAT COULD WITHSTAND THE MOTION FOR SUMMARY JUDGMENT.

The Complaint includes conclusory allegations that the Township defendants violated petitioner's constitutional and civil rights. The District Court subjected each of these claims to detailed analysis, and found each one insufficient as a matter of law. The petitioner's arguments to the contrary, on this appeal, are without merit. The petitioner's claims in this respect, other than those in the nature of inverse condemnation, are addressed here; it is anticipated that, as in the District Court, other counsel will address the allegations of constitutional cast that relate to inverse condemnation.

Petitioner objects to the dismissal of his claim under 42 U.S.C. § 1985. Petition, at 24. However, the Complaint is insufficient, as a matter of law, to support the claim for damages asserted, for an alleged conspiracy to violate petitioners' civil rights, under 42 U.S.C. § 1985.

There are three essentially independent subsections to the cited statute. The dispositive language provides:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly,

> any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3). The first two subsections have no bearing on a case of this nature.

The difficulty with this claim is that the cited section is directed to invidious, class-based discrimination, and where, as here, there is no allegation of racial or other invidious class-based animus, the pleading is insufficient as a matter

of law. *Lake v. Arnold*, 112 F.3d 682, 685 (3d Cir. 1997); *see also Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, *reh. den.*, 464 U.S. 875 (1983) (holding § 1985(3) inapplicable where alleged discrimination was based on economic activity or status). Petitioner's argument in support of this claim fails to address this problem. Petition at 24. The argument that petitioner does present appears to address standing, to the extent it is intelligible, and entirely misses the point.

For these reasons, it is respectfully submitted that petitioner's claim under 42 U.S.C. § 1985 was properly dismissed by the District Court.

Petitioner also contests the District Court's dismissal of his civil rights claims under 42 U.S.C. § 1983. Petition at 5-26. He mistakenly asserts that the District Court never addressed the claim under this statute. *Ibid.* While it is not clear from the argument, it is possible that petitioner fails to understand that the cited statute does not create any rights, in and of itself, other than the right to bring an action for damages, for the violation of civil rights founded elsewhere.

Petitioner's constitutional claims, other than for inverse condemnation, arise from the repaving of the road, from the Township defendants having compelled him to connect to the municipal sewer system, and from the alleged failure to provide him with an opportunity to dispute the amount of taxes owed on his property. (Petitioner also claims to have been damaged by the Township's having failed to properly "supervise" the installation of his sewer connection, but petitioner does not, and cannot, identify any authority for the implicit proposition that the Township had any legal duty in this regard). Petitioner's argument does not even bother

to identify the supposed constitutional right infringed. The District Court, nevertheless, analyzed the claims under both the Equal Protection Clause and the Due Process Clause.

Petitioner's equal protection challenge, in the absence of any allegation of invidious, class-based discrimination, is to be evaluated on a rational basis test. *Rogin v. Bensalem Tp.*, 616 F.2d 680, 687-9 (3d Cir. 1980), *cert. den. sub nom. Mark-Garner Assocs., Inc. v. Bensalem Tp.*, 450 U.S. 1029 (1981). Petitioner does not allege that the Township's decision to regrade the bridge approach lacked rational basis; rather, he claims to have been injured by the consequences of the work. This is simply not sufficient, as a matter of law.

The equal protection challenge as to the enforced sewer connection is similarly without merit. As petitioner asserts, from his Complaint forward, the road regrading, on the southern border of his property, included a bridge approach. The bridge, obviously, traverses a stream that forms another boundary to petitioner's land, which, we are repeatedly told, suffers from a high water table. It should not then be surprising that the municipal authorities deemed the property inappropriate for continued use of a septic system, when the sewers became available. While the petitioner does assert that other properties in the Township are allowed to use septic systems, there is no assertion, much less proof, that any one or more of those properties are similarly situated; *i.e.*, petitioner makes no allegation or showing that another lot in the Township, with a high water table and within the service area of the sewer system, has been allowed to avoid connecting to the sewers and use a septic system.

Petitioner asserts that the District Court failed to recognize his "fundamental" protected property interest in

this analysis. Pb19. However, it is petitioner who fails to understand that the sort of "fundamental" interests considered, under the Equal Protection Clause, are those that would, in this context, distinguish one holder of property ownership rights from another, such as race, religion or political affiliation. *Rogin*, above. Petitioner's argument makes no effort to distinguish *Rogin*, or any of the cases cited in the District Court's analysis; neither does petitioner cite to any contrary authority.

Finally, there is no basis for the claim that petitioner had a viable private right of action under 42 U.S.C. § 4001. Petition, at 24-25. No such private right of action has ever been recognized in reported case law. Further, the assertion that permits were not obtained for the regrading ignores the fact that no such permits were required.

For these reasons, it is respectfully submitted that the District Court correctly held that petitioner cannot demonstrate any violation of his rights to equal protection of the laws.

Petitioner's arguments are similarly insufficient as to any supposed deprivation of due process of law. Municipal enforcement of sewer connection requirements are entirely proper exercises of the police power. *Stern v. Halligan*, 158 F.3d 729 (3d Cir. 1998) (enforcing public-water-connection requirement, finding no meaningful distinction from arguably more compelling public justification for sewer connection requirement). Petitioner argues that there were procedural irregularities before the Municipal Court, but he was not damaged thereby (except, by his allegation, the resulting compulsion to connect to the sewers), since he was not convicted of the charge. His other procedural due process

claims are answered by the existence of adequate remedies at State law: any actual damage to petitioner's property (assuming, *arguendo*, such could be proved) could have been remedied by an action for inverse condemnation (or other relief, *e.g.*, to abate an alleged nuisance) in the New Jersey Superior Court, and this is an adequate post-deprivation remedy under State law. His claim that Felter interfered with his contract to purchase another property, where the septic system had failed, would in like manner have been reviewable by the Superior Court, had petitioner proceeded with the transaction and been subject to enforcement activity by Felter (although this entire aspect of petitioner's action is specious, since it is apparent that the transaction must have failed due to the unusable septic system itself). The State law remedies, in turn, provided petitioner with the process to which he was due, and there was, therefore, no constitutional violation. *E.g., DeBlasio v. Zoning Bd. of Adj., Tp. of West Amwell*, 53 F.3d 592, 596-7 (3d Cir. 1995), and cases there cited. The same opinion also addresses substantive due process arguments, holding that such a claim requires evidence that the challenged governmental action was arbitrary and based on considerations outside the legitimate merits thereof, such as the personal or familial interest alleged therein. 53 F.3d at 599-600. There is no suggestion, in the present Complaint, that any of the actions taken or decisions made by the Township defendants were of such character. It may thus be seen that there is no constitutional claim, and therefore no cause of action for damages under 42 U.S.C. § 1983.

The same arguments defeat any constitutional claims for damages, for the same injury, cast differently in trespass or nuisance, as in Counts X and XI of the Complaint.

Petitioner cannot recover damages for the alleged constitutional violations arising from the tax sale, as asserted in Counts XII-XXI. The claim appears to be one based on procedural due process; as noted above, an adequate State remedy defeats the claim. New Jersey's courts have always been available to review challenges to a tax sale. *E.g., Nordell v. Township of Mantua*, 45 N.J. Super. 253 (Ch. Div. 1957) (sustaining challenge to tax sale and subsequent *in rem* foreclosure).

For all of these reasons, it is respectfully submitted that the Court of Appeals properly affirmed the District Court's dismissal of petitioner's claims, for alleged violations of his civil and constitutional rights, under 42 U.S.C. §§ 1983 and 1985.

III.

WHETHER THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S ALLEGED CLAIM UNDER THE RICO STATUTE.

The Complaint also alleged a cause of action under the RICO statute, 18 U.S.C. § 1961, *et seq*. This claim was based on the alleged sidebar conversations in the Municipal Court proceeding, and an alleged failure to supply petitioner with complete and unedited copies of the courtroom tape records, which, according to petitioner, rendered the Township defendants "liable for Fraud, Malicious and Tortious Interference with a Contractual Relationship, Malicious Prosecution, Abuse of Process, Negligence, and Conspiracy to Violate Petitioner's Rights." The District Court correctly dismissed the RICO claim as insufficient on the pleadings.

It is correct that, as petitioner notes, the RICO claim was not addressed in the Township defendants' original moving papers. However, their reply letter brief pointed out that the Complaint lacked the most fundamental aspect of a properly pleaded RICO claim, an allegation of a pattern of racketeering based the predicate acts specified in the statute. Pa. Based on this pleading deficiency, and others noted in the Opinion, the District Court held the pleading insufficient to state a RICO claim.

Petitioner argues that the alleged sidebar conferences in the Municipal Court were intended to obstruct justice in the District Court, to which the petitioner had, at the time, removed the Municipal Court proceeding against him. Petition, at 5. Petitioner speculates that the substance of the conversation was plotting how to "defraud the federal district court out of jurisdiction" of the case. *Ibid.; see also* Petition at 15, where petitioner states only that he could hear the individuals whispering. The argument assumes that a quasi-criminal case in a municipal court may properly be removed to a federal district court, that there are any means by which a federal district court could be defrauded of its (assumed) jurisdiction over such a case, and that a conspiracy to so (assumedly and allegedly) defraud the federal court of its (assumed) jurisdiction would be discussed by three individuals, two of whom were practicing attorneys (the municipal Judge and prosecutor), at the front of an open courtroom and in the presence of the intended victim (petitioner) rather than behind closed doors. It is respectfully submitted that each of these assumptions is absurd, taken separately, and that the petitioner's argument, that relies on these assumptions taken together (along with the assumption that the petitioner "knows" what was said in a conversation he admits he could not hear and has no other evidence to document), is frivolous.

Since obstruction of justice is the only supposed offense of the defendants, as pleaded by the petitioner, that falls within the extensive catalogue of predicate acts of racketeering activity, as defined by 18 U.S.C. § 1961(1), and the allegations of that offense are, as shown above, utterly incredible, the petitioner clearly failed to plead a pattern of racketeering activity, necessary to any RICO claim, and the District Court's holding to that effect was clearly correct.

Petitioner characterizes the dismissal of this claim as *sua sponte* and without notice. However, petitioner made no effort to respond, before the District Court, to the argument presented in the reply letter brief, thus exposing as frivolous his argument, first made here, that this aspect of the decision deprived him of an opportunity to be heard. The supposed RICO claim was so clearly and utterly insufficient that it must be respectfully submitted that any error, if error there were, in the District Court's dismissal of that claim, in the course of the disposition of the Township defendants' motion (as opposed to requiring an additional motion directed to the RICO claim), was clearly harmless.

For these reasons, it is respectfully submitted that the Court of Appeals properly affirmed the District Court's dismissal of the petitioner's RICO claim against the Township defendants.

IV.

WHETHER THE REMAINDER OF THE PETITIONER'S ARGUMENTS, AS TO HIS CASE AGAINST THE TOWNSHIP DEFENDANTS, ARE WITHOUT MERIT.

In addition to the arguments addressed above, and those properly directed to other defendants and to counsel for the Township defendants on claims other than for non-inverse-condemnation compensatory damages, petitioner asserts here that his motions, for leave to file an amended complaint, to extend discovery, to impose sanctions for failure to provide discovery, to enter default judgment and for costs and fees, were incorrectly denied, and that the District Court erred in vacating default against the Bernards Township Sewerage Authority. These arguments are without merit.

Petitioner makes no attempt to respond to the rationale for these rulings, set forth in the District Court's Opinion. Indeed, petitioner presents no citation to authority, nor any argument at all, save to characterize each point as "clear" based on the "record" or the "analysis above." Petitioner does not even condescend to include his proposed amended pleading in his Appendix, much less present a scrap of discussion explaining why he differs with the District Court's rejection of the same as futile.

It is, therefore, respectfully submitted that no further response is necessary, to petitioner's arguments that are as totally devoid of substance as of merit. It is further submitted that there is no basis for disturbing the pertinent rulings of the District Court.

V.

PETITIONER'S MISREPRESENTATIONS OF FACT AND LAW.

It is respectfully submitted that the misrepresentations of fact and law, set forth in the Petition, are too extensive to state fully within the page limits of the Rules of this honorable Court, beyond those identified above.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that there is neither any need nor any basis for granting the Petition.

Respectfully submitted,

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